

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALPHONSE CASSONE

Appeal No. 2006-0694
Application No. 09/619,357

HEARD: March 9, 2006

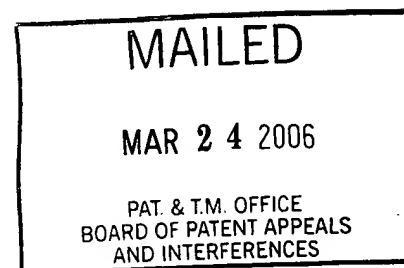
Before FRANKFORT, MCQUADE, and CRAWFORD, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3 through 10 and 13 through 20, all of the claims remaining in the application. Claims 2, 11, 12 and 21 have been canceled.¹

¹ Claims 11 and 21 were canceled in an amendment filed concurrently with the appeal brief on December 19, 2003.



Appeal No. 2006-0694
Application No. 09/619,357

Appellant's invention is directed to a non-invasive, non-surgical method for treating inflammatory musculoskeletal connective tissue disorders, such as arthritis, using acoustic waves. Independent claim 1 is representative and reads as follows:

1. A method for treating inflammatory musculoskeletal connective tissue disorders comprising the steps of:

providing a low frequency sonic transducer;

immersing said low frequency sonic transducer in an interior of a liquid-containing container and below an upper surface of a liquid in said liquid-containing container;

positioning a person having an inflammatory musculoskeletal connective tissue disorder a therapeutically beneficial distance from said container; and

exposing said person for a therapeutically beneficial period of time to acoustic waves from said low frequency sonic transducer at a therapeutically beneficial frequency;

wherein said therapeutically beneficial frequency is between approximately four hundred and eight hundred Hertz.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Balamuth	3,585,991	Jun. 22, 1971
Nedwell	0 891 761	Jan. 20, 1999
(European Patent Application)		

Appeal No. 2006-0694
Application No. 09/619,357

Claims 1, 3 through 10 and 13 through 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Balamuth in view of Nedwell.

Rather than attempt to reiterate the examiner's commentary with regard to the above-noted § 103 rejection and the conflicting viewpoints advanced by appellant and the examiner regarding that rejection, we make reference to the examiner's answer (mailed February 11, 2004) for the reasoning in support of the rejection, and to appellant's brief (filed December 19, 2003) and reply brief (filed April 12, 2004) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the above-noted § 103 rejection will not be sustained. Our reasons follow.

As can be seen in Figures 1 through 5, Balamuth discloses an apparatus in the form of a tub or "acoustic auditorium" (14) used for simultaneously applying a number of stimuli to humans for therapeutic purposes. As noted in column 5, line 13, et seq., once a human (12) is placed in the acoustic auditorium with a liquid medium (15) therein then a transmission through the fluid medium of acoustic vibrations may occur to obtain a micromassaging of at least a portion of the human body so that energy penetrates pervasively into the acoustically accessible inner region of the body for physiotherapy effects. A transducer (45) is hidden from view within the walls of the acoustic auditorium and is in energy coupling relationship to a wall (20) of the acoustic auditorium to provide the acoustic vibrations in the form of coherent elastic energy waves (50) that move through the liquid (15) and into the human (12) immersed in the liquid. As described in column 2, lines 56-68, the actual micromassaging occurring in the patient's body

is at a quite low level of intensity for safety purposes, and in the bath water no cavitation levels of vibration are permitted. The patient therefore does not "feel" anything while the beneficial massage occurs. For many individuals, this absence of sensation creates a greater or lesser degree of concern as to whether the equipment is really functioning and therefore whether the treatment is proceeding. To allay such concerns, it is important to interconnect a suitable water agitator system with the auditory and

acoustic auditorium environment creating elements. Thus, whenever the patient hears the harmonious sound program selected, he will see the bath water "vibrate" at the same time.

The tub or acoustic auditorium (14) also includes other forms of devices intended to provide sensory stimulation to a human patient, e.g., high-fidelity sound received auditorily via stereo speakers or headphones, harmonically flowing colors either in projected form or provided via controlled illumination, and aroma therapy. Balamuth indicates that the various programmed multisensory environments for sight, sound and smell are so coordinated as to produce a synergistic effect, termed a Psychophysiosonic effect by the patentee.

Nedwell discloses an apparatus for dislodging or loosening mucus in a person's lungs, particularly an individual suffering from cystic fibrosis. As can be seen in Figures 5 through 8, the apparatus includes a container or bath (24) arranged to receive a patient (28) and is filled with water (30) such that the patient's chest is immersed in the water. A vibrator in the form of a water-proof, moving-coil loudspeaker (34) is mounted below the surface of the water and positioned to direct vibrations through the liquid to the patient's chest and lungs. Nedwell

notes that the vibrating means is arranged so that it can produce vibrations at the pulmonary resonant frequency of the patient's lungs, which may be in the range of 40 to 160 Hertz.

As urged by appellant in the brief and reply brief, noticeably absent from either Balamuth or Nedwell is any teaching or suggestion of a method like that set forth in the claims before us on appeal, wherein inflammatory musculoskeletal connective tissue disorders, such as arthritis, are treated using a low frequency sonic transducer immersed in a container of liquid, with the patient being positioned "a therapeutically beneficial distance from said container" and exposed for a therapeutically beneficial period of time to acoustic waves at a therapeutically beneficial frequency of between approximately four hundred and eight hundred Hertz.

In both Balamuth and Nedwell, the patient is positioned within a container filled with liquid and exposed to acoustic waves propagated through the liquid to the patient. There is simply no teaching, suggestion or incentive in the patents applied by the examiner of a method wherein the acoustic transducer is submerged in a liquid filled container and the

Appeal No. 2006-0694
Application No. 09/619,357

patient is spaced a therapeutically beneficial distance away from the container. For that reason, we will not sustain the rejection of independent claim 1, or that of independent claim 14 (which is more specific than claim 1), under 35 U.S.C. § 103(a) based on the patents to Balamuth and Nedwell.

The examiner's attempt to characterize the method requirement of spacing the patient a therapeutically beneficial distance away from the container as being "an obvious practical consideration of intended use" and/or as not involving an inventive step, is improper and wholly unsupported by any evidence of record. As for the references to Alton (5,695,455) and Eakin (5,097,821) mentioned on page 5 of the answer, we share appellant's view as expressed in the reply brief (pages 5-7). Moreover, as pointed out by the Court in In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970), where a reference is relied upon to support a rejection, whether or not in a minor capacity, there would appear to be no excuse for not positively including the reference in the statement of the rejection.

Appeal No. 2006-0694
Application No. 09/619,357

Regarding the examiner's contention on page 4 of the answer that a person outside of the tub or acoustic auditorium (14) of Balamuth would necessarily be subjected to the sonic vibrations emanating from the tub and thereby receive the claimed method of treatment, we find no basis in Balamuth to support any such conclusion. There is certainly no teaching or suggestion in Balamuth of appellant's claimed method and no reason to assume that the method would be inherently performed. We again point to the description in Balamuth at column 2, lines 56-68 concerning the "micromassaging" occurring as a result of the acoustic vibrations being transmitted through the water via coherent elastic energy waves (50) and particularly note that waves are at a "quite low level of intensity for safety purposes" and that even the patient submerged in the tub "does not 'feel' anything while the beneficial massage occurs."

Appeal No. 2006-0694
Application No. 09/619,357

In light of the foregoing, the decision of the examiner to reject claims 1, 3 through 10 and 13 through 20 of the present application under 35 U.S.C. § 103(a) is reversed.

REVERSED

Charles E. Frankfort
Charles E. Frankfort
Administrative Patent Judge


John P. McQuade
Administrative Patent Judge

Murriel E. Crawford
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

CEF : tdl

Appeal No. 2006-0694
Application No. 09/619,357

Weiss & Moy PC
4204 North Brown Avenue
Scottsdale, AZ 85251